

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #8	CCRB Case #: 202005460	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/22/2020 9:40 PM	Location of Incident: Rogers Avenue and Montgomery Street	Precinct: 71	18 Mo. SOL 1/22/2022	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 08/05/2020 11:54 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 08/05/2020 11:54 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Daniel Guida	00000	941862	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Francisco Diaz	27416	952677	071 PCT
2. SGT Martin Cunningham	02100	946888	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Daniel Guida	Abuse: Lieutenant Daniel Guida stopped the vehicle in which § 87(2)(b) was an occupant.	
B.LT Daniel Guida	Force: Lieutenant Daniel Guida used a chokehold against § 87(2)(b)	
C.LT Daniel Guida	Abuse: Lieutenant Daniel Guida frisked § 87(2)(b)	
D.LT Daniel Guida	Abuse: Lieutenant Daniel Guida searched the vehicle in which § 87(2)(b) was an occupant.	
E.LT Daniel Guida	Discourtesy: Lieutenant Daniel Guida acted discourteously toward § 87(2)(b)	
F.LT Daniel Guida	Off. Language: Lieutenant Daniel Guida made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
G.LT Daniel Guida	Discourtesy: Lieutenant Daniel Guida spoke discourteously to § 87(2)(b)	
H.LT Daniel Guida	Abuse: Lieutenant Daniel Guida threatened to arrest § 87(2)(b)	
I.LT Daniel Guida	Abuse: Lieutenant Daniel Guida interfered with § 87(2)(b)'s use of a recording device.	
J.LT Daniel Guida	Abuse: Lieutenant Daniel Guida failed to provide § 87(2)(b) with a business card.	

Case Summary

On July 23, 2020, § 87(2)(b) reported this incident to IAB via telephone, generating original log § 87(2)(b). A spin-off log was then forwarded to the CCRB, where it was received on August 5, 2021.

On July 24, 2020, at approximately 9:40 PM, Lt. Daniel Guida of the 71st Precinct, who was with Sgt. Martin Cunningham and PO Francisco Diaz of the 71st Precinct, stopped § 87(2)(b)'s vehicle at the intersection of Rogers Avenue and Montgomery Street in Brooklyn (**Allegation A: Abuse of Authority**, § 87(2)(g)). Lt. Guida allegedly grabbed § 87(2)(b)'s neck and pulled him from the car (**Allegation B: Force**, § 87(2)(g)). Under Lt. Guida's supervision, PO Diaz frisked § 87(2)(b) and searched § 87(2)(b)'s vehicle (**Allegations C and D: Abuse of Authority**, § 87(2)(g)). Neither Lt. Guida nor § 87(2)(b) wore a facemask, and Lt. Guida allegedly refused § 87(2)(b)'s request that Lt. Guida maintain a safe distance from him (**Allegation E: Discourtesy**, § 87(2)(g)). Lt. Guida also allegedly referred to § 87(2)(b) as a "pussy" (**Allegation F: Offensive Language**, § 87(2)(g)). § 87(2)(b) placed a phone call to his mother, and Lt. Guida said to him, "Men don't call their mom when they're in trouble – boys do that" (**Allegation G: Discourtesy**, § 87(2)(g)). Lt. Guida also said that § 87(2)(b)'s vehicle bore a "bullshit license plate" (also **Allegation G: Discourtesy**, § 87(2)(g)). Lt. Guida said that § 87(2)(b) could be arrested for operating an improperly registered vehicle and that if he saw § 87(2)(b) driving the vehicle with temporary plates or an out-of-state plate in the future, he would arrest § 87(2)(b) (**Allegation H: Abuse of Authority**, § 87(2)(g)). Lt. Guida allegedly interfered with § 87(2)(b)'s use of a recording device (**Allegation I: Abuse of Authority**, § 87(2)(g)) and failed to provide a business card to § 87(2)(b) (**Allegation J: Abuse of Authority**, § 87(2)(g)). Ultimately, § 87(2)(b) was not arrested or issued a summons, and the officers departed.

The investigation obtained BWC videos recorded by Lt. Guida, Sgt. Cunningham, and PO Diaz (Board Review 01, 02, and 03), as well as a brief video recorded by § 87(2)(b) (Board Review 04).

Findings and Recommendations

Allegation (A) Abuse of Authority: Lieutenant Daniel Guida stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that Lt. Guida stopped § 87(2)(b)'s vehicle and that § 87(2)(b)'s vehicle has darkly tinted windows.

§ 87(2)(b) stated that his vehicle's windows were tinted more darkly than was legal and that he had previously been pulled over in the same vehicle for its degree of window tints.

Lt. Guida stated that he initiated this vehicle stop because § 87(2)(b)'s vehicle had excessively tinted windows. Lt. Guida and his officers did not test § 87(2)(b)'s windows, but they were "very dark" and clearly illegal.

Also note that Lt. Guida was familiar with § 87(2)(b) prior to this incident, although he did not know that § 87(2)(b) was the driver until after he initiated the vehicle stop. Lt. Guida, the Special Operations Lieutenant, described § 87(2)(b) as a known OGD Folk Nation gang member. Lt. Guida stated that he had had numerous prior interactions with § 87(2)(b) who had been a suspect in two nonfatal shootings.

Per New York State Vehicle and Traffic Law 375 (12-a), it is unlawful to operate any motor vehicle of which the front or side windows are composed of, covered by, or treated with any material which has a light transmittance of less than seventy percent (unless such materials are limited to the uppermost six inches of the windshield or other limited, specific areas) (Board Review 05).

Given § 87(2)(b)'s admission that his vehicle's windows were tinted darker than is legally allowed, the investigation credits that Lt. Guida identified, via visual assessment, that § 87(2)(b) was in violation of the above-cited VTL. § 87(2)(g)

Allegation (B) Force: Lieutenant Daniel Guida used a chokehold against § 87(2)(b)

§ 87(2)(b) stated that when Lt. Guida approached the vehicle's driver side, Lt. Guida grabbed § 87(2)(b) by the back of the neck. Lt. Guida's fingers extended around § 87(2)(b)'s neck, but Lt. Guida did not squeeze or choke him. However, Lt. Guida grabbed his neck with force, as though Lt. Guida "wanted to choke [him]." Lt. Guida maintained the same contact for approximately half of the ensuing interaction. § 87(2)(b) stated that Lt. Guida's grip caused pain during and after the incident. § 87(2)(b) did not seek treatment for this pain due to coronavirus concerns. He did not sustain any bruising in that area.

Lt. Guida denied grabbing § 87(2)(b)'s neck. He acknowledged resting his hand on § 87(2)(b)'s shoulder and stated that he did so to sense whether § 87(2)(b) was tense.

Lt. Guida's BWC videos clarify the manner of physical contact in question (Board Review 01). At 1 minute 5 seconds, Lt. Guida stands on the passenger side as § 87(2)(b) exits the driver seat. Lt. Guida does not make any contact with § 87(2)(b) as he exits the vehicle. At 3 minutes 28 seconds, Lt. Guida places a hand on § 87(2)(b)'s right shoulder, resting it there for the next 25 seconds. At 7 minutes 40 seconds, Lt. Guida again rests a hand on § 87(2)(b)'s right shoulder, and his hand touches the side of § 87(2)(b)'s neck, but Lt. Guida never grabs, squeezes, wraps his fingers around, or applies pressure to the neck. At 8 minutes 40 seconds Lt. Guida moves his hand to its first position, on the shoulder. At 9 minutes 45 seconds, Lt. Guida repositions his hand to near § 87(2)(b)'s neck, as before. Finally, at 11 minutes, Lt. Guida removes his hand from § 87(2)(b)'s shoulder.

Although Lt. Guida's hand rested on § 87(2)(b)'s shoulder and made minor contact with the side of § 87(2)(b)'s neck, the BWC video reveals that Lt. Guida did not grab and wrap his fingers around § 87(2)(b)'s neck as described. § 87(2)(g)

Allegation (C) Abuse of Authority: Lieutenant Daniel Guida frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Lieutenant Daniel Guida searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that under Lt. Guida's supervision, PO Diaz frisked § 87(2)(b) and searched § 87(2)(b)'s vehicle.

§ 87(2)(b) denied any odor of marijuana or the presence of any marijuana in his vehicle. He stated that he smokes marijuana occasionally but had not done so in the vehicle recently.

Lt. Guida stated that when he and his officers approached § 87(2)(b)'s vehicle, and when § 87(2)(b) rolled down the windows, Lt. Guida smelled the odor of burnt marijuana emanating from the vehicle. Lt. Guida had formerly been assigned to Brooklyn South Narcotics and had been trained in identifying the odor of marijuana. Upon approach, PO Diaz announced that he smelled marijuana and asked § 87(2)(b) to step out of the car. Lt. Guida observed no bulge on § 87(2)(b)'s person, and there was no indication he was carrying a weapon. Due to the presence of the odor of marijuana in the vehicle, PO Diaz then frisked § 87(2)(b). Lt. Guida believed that, procedurally, the officers had probable cause to fully search him. Lt. Guida did not know if any marijuana was recovered from the vehicle or from § 87(2)(b)'s person.

Lt. Guida did not testify as to the vehicle search. However, PO Diaz's BWC videos captured the pertinent interactions (Board Review 03). At 1 minutes 5 seconds, PO Diaz asks § 87(2)(b) to exit the vehicle and says, "Besides weed, you have anything else in the car?" § 87(2)(b) replies that there is no marijuana in the vehicle. PO Diaz asks if he had marijuana in the vehicle earlier, which § 87(2)(b) also denies. PO Diaz then asks, "So what am I smelling in there? You smoked earlier or something?" PO Diaz appears to frisk § 87(2)(b). Between 1 minute 30 seconds and the end of the video, PO Diaz searches the vehicle's passenger compartment and then the trunk. At 1 minute 50 seconds, PO Diaz lifts what appears to be an ashtray from a cupholder within the center console and says states that he has identified "ashes of marijuana." He does not appear to identify or recover any other contraband within the vehicle.

Per the ruling in *People v. Chestnut*, 43 A.D.2d 260 (1974), the presence of the odor of marijuana within a vehicle furnishes officers with probable cause to search the vehicle and its occupants (Board Review 06).

Lt. Guida testified as to the odor of marijuana within the vehicle and PO Diaz referred to the odor in his BWC video. PO Diaz also believed ash within the vehicle to have been the residue of burnt marijuana. However, § 87(2)(b) denied the presence of the odor of marijuana or any marijuana within the vehicle. Further, PO Diaz's search of the vehicle revealed no actual marijuana or other confirmation of the alleged odor, such as paraphernalia or the butt of a marijuana cigarette. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Discourtesy: Lieutenant Daniel Guida acted discourteously toward § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) stated that Lt. Guida's face was positioned approximately two inches from his own. § 87(2)(b) concerned about possible exposure to COVID, said, "Officer, it's corona outside. Can you please give me my distance?" Lt. Guida refused.

Lt. Guida's BWC video reveals, at 2 minutes 45 seconds, that § 87(2)(b) asked Lt. Guida, "Can you back up a little bit?" Lt. Guida replied, "No. Absolutely out of the question." § 87(2)(b) never referred to any concern about the COVID pandemic.

If Lt. Guida refused a request for safe social distancing specifically framed as a COVID-related concern, such action would be discourteous in nature. However, absent any reference to the COVID pandemic, Lt. Guida was under no obligation to move away from § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Offensive Language: Lieutenant Daniel Guida made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

§ 87(2)(b) § 87(2)(b)'s mother) arrived on scene after officers stopped § 87(2)(b)'s vehicle. § 87(2)(b) provided a brief phone statement but subsequently missed several interview appointments.) § 87(2)(b) alleged that Lt. Guida said to § 87(2)(b) "I know you're a pussy because you're calling your mother."

§ 87(2)(b) did not spontaneously allege that Lt. Guida referred to him as a "pussy." However, when asked about the allegation made by § 87(2)(b) § 87(2)(b) reiterated the allegation that Lt. Guida called him a "pussy."

Lt. Guida's BWC video reveals that he never referred to § 87(2)(b) as a "pussy" or used any other gender-related epithet (Board Review 01).

§ 87(2)(g)

Allegation (G) Discourtesy: Lieutenant Daniel Guida spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that when he pulled over for the officers, as he waited in his car, he used a cell phone to call § 87(2)(b) and informed her he was being pulled over. Lt. Guida appeared to overhear this conversation.

Lt. Guida's BWC video shows, after 2 minutes, that § 87(2)(b) called § 87(2)(b) and told her that he had been pulled over by police officers. He ends the call after 2 minutes 40 seconds. At 2 minutes 54 seconds, Lt. Guida says to § 87(2)(b) "Here's what I'm going to tell you – going to suggest... You're a man, men don't call their mom when they're in trouble. Boys do that" (Board Review 01). The same BWC video also shows that later, at 11 minutes 27 seconds, Lt. Guida says to § 87(2)(b) that his vehicle bears a "bullshit license plate."

Lt. Guida acknowledged making the remarks in question. He explained that he said "Boys do that" to ease the tension between himself and § 87(2)(b). He made this remark as a joke and did not intend it as an insult. He also explained that he used the word "bullshit" to emphasize the point that § 87(2)(b) needed to obtain a legitimate license plate.

NYPD Patrol Guide Procedure 200-02 requires that officers treat members of the public with compassion, courtesy, professionalism, and respect (Board Review 07).

Whatever Lt. Guida's intention in remarking, "Boys do that," this remark was disparaging. Such a remark was not courteous or respectful. Additionally, Lt. Guida's use of profanity was gratuitous; his recommendation that § 87(2)(b) correct any problem with his license plate would have been equally effective without any resort to profanity. § 87(2)(g)

Allegation (H) Abuse of Authority: Lieutenant Daniel Guida threatened to arrest § 87(2)(b)

It is undisputed that § 87(2)(b)'s vehicle bore a temporary New Jersey license plate and that Lt.

Guida said more than once that § 87(2)(b) could or would be arrested.

§ 87(2)(b) stated initially that the vehicle in question was not registered to him. He also stated that the vehicle was “not registered at all.” However, § 87(2)(b) later stated that the vehicle was in fact registered to him, and that he provided the officers paperwork demonstrating that he had a valid registration. § 87(2)(b) said that he received temporary New Jersey license plates at the dealership where he purchased the vehicle. Additionally, § 87(2)(b) stated that his driver’s license was issued in Virginia, where he sometimes resides with his father.

§ 87(2)(b) stated that took his phone out of his pocket and began to record his interaction with Lt. Guida. Lt. Guida said, “If you keep pulling out your phone, I’m going to arrest you.”

Additionally, according to § 87(2)(b) Lt. Guida said that said that every subsequent time he saw § 87(2)(b) in his car, regardless of the plate it bore, he would arrest him. Per § 87(2)(b) what Lt. Guida said in this context was that if he caught § 87(2)(b) driving with out-of-state plates again, he would arrest him.

§ 87(2)(b) also stated that when she asked Lt. Guida to remove his hand from near § 87(2)(b) s neck, Lt. Guida replied, “Say another word and your son will be arrested.” § 87(2)(b) did not spontaneously corroborate this allegation, but when asked, he affirmed that Lt. Guida made such a remark.

As noted above, Lt. Guida testified that he was familiar with § 87(2)(b) prior to this incident, although he did not know that § 87(2)(b) was the driver until after he initiated the vehicle stop. Lt. Guida described § 87(2)(b) as a known gang member and stated that he had had numerous prior interactions with § 87(2)(b) who had been a suspect in two nonfatal shootings.

Lt. Guida had seen § 87(2)(b) driving the same vehicle previously, and so he found it suspicious that the vehicle bore a temporary license plate. Additionally, he knew that § 87(2)(b) lived in Brooklyn, § 87(2)(b) and so it was suspicious that the temporary plate was from New Jersey. One of Lt. Guida’s officers performed a database check for § 87(2)(b) s license plate number either prior to or immediately after initiating the vehicle stop. The license plate number was not on file. This typically indicates a failure to register the vehicle or a forged plate. Additionally, driving an unregistered vehicle, or with an illegitimate license plate, is unlawful.

When § 87(2)(b) exited his vehicle, Lt. Guida asked when he had purchased it. § 87(2)(b) answered that he purchased it one week prior. Lt. Guida had seen § 87(2)(b) in the same vehicle more than one week prior, and so his suspicion was raised further.

§ 87(2)(b) then arrived on scene. Lt. Guida told her that § 87(2)(b) was subject to arrest. This was due to the vehicle’s faulty registration. Lt. Guida did not say, “Shut up, say another word and your son will be arrested.” Rather, he said “If I get any nonsense from you, he’s just going.” Lt. Guida meant that if he did not receive a satisfactory explanation regarding the vehicle’s registration, § 87(2)(b) would be arrested.

Lt. Guida did not ultimately determine why the vehicle bore a temporary plate, or whether the plate was forged. One of Lt. Guida’s subordinate officers determined that the officers could depart without taking further action, and Lt. Guida deferred to his judgment. This meant that the officer had not discovered any more serious offense, such as the vehicle having been stolen. This did not, however, mean that the officers determined that § 87(2)(b) s plates were proper or that his registration were in order. Rather, the officers exercised discretion to issue § 87(2)(b) a verbal

warning instead of making an arrest for the improper registration.

When Lt. Guida asked where § 87(2)(b) planned to register the vehicle, § 87(2)(b) said he would do so in Virginia. Lt. Guida knew that § 87(2)(b) lives in New York, and not in Virginia. Lt. Guida suspected that § 87(2)(b) might plan to “rate jump,” meaning he would register his vehicle in Virginia so that he would pay a lower insurance rate. This is unlawful, and an arrestable offense. As such, Lt. Guida said, “If I catch you in this car and it’s got a Virginia plate on it, I’m going to take you to jail for rate-jumping on your insurance.” Lt. Guida also acknowledged saying, “If I find another temporary plate on this car, you’re going to jail.”

Lt. Guida denied ever saying that § 87(2)(b) would or could be arrested for using his phone.

Lt. Guida’s BWC video clarifies the nature of the remarks in questions, and their context (Board Review 01). At 1 minute 39 seconds, Lt. Guida asks when § 87(2)(b) purchased the car, and § 87(2)(b) replies, “Last week.” Lt. Guida asks whether the plates have been changed on the car, and § 87(2)(b) says that these are its first plates. At 2 minutes 5 seconds, Lt. Guida asks, “Will I find there was another plate attached before this?” At 3 minutes, Lt. Guida says, “Don’t start out by lying to me about things you don’t need to lie about. You’ve had this car for more than a week.” At 5 minutes 50 seconds, Sgt. Cunningham hands Lt. Guida a smartphone whose screen appears to display information about § 87(2)(b). Sgt. Cunningham asks § 87(2)(b) where he got the “temp tag.” He replies that it came from a dealership. Lt. Guida asks, “Where did you actually get the plate from?” At 6 minutes 45 seconds, § 87(2)(b) says that the vehicle previously belonged to his mother. At 7 minutes 20 seconds, Lt. Guida says that § 87(2)(b)’s registration is not “on the up and up.” Lt. Guida points out that § 87(2)(b) said first that he purchased the car from a dealership and then that it had belonged to his mother. Lt. Guida also asks why it bears a temporary plate if it previously belonged to § 87(2)(b)’s mother.

At 7 minutes 45 seconds, Lt. Guida says to § 87(2)(b) “Here’s what I’m going to say, because in two seconds he’s about to go to jail simply for lying to me,” to § 87(2)(b). He continues, “Now, here’s the answer, because if I get any nonsense from you, he’s just going.”

At 8 minutes 20 seconds, Lt. Guida asks § 87(2)(b) where and when § 87(2)(b) bought the car. § 87(2)(b) says she bought it from a dealership “right before the Corona season.” Lt. Guida asks where the plates on the car came from and why the vehicle does not bear a metal license plate four months after she reportedly purchased it. § 87(2)(b) explains that he is switching his registration, and Lt. Guida replies that he cannot drive the car until the registration is properly sorted out. He suggests that § 87(2)(b) or § 87(2)(b) obtained a new temporary plate instead of properly registering the vehicle. § 87(2)(b) replies that a dealer gave her the temporary plate for insurance purposes. When Lt. Guida asks in what state they’re going to register the car, § 87(2)(b) answers, “Virginia.” Lt. Guida asks why the vehicle bears temporary New Jersey plates if they are going to register it in Virginia. § 87(2)(b) replies that she followed the dealership’s advice regarding the temporary plate.

At 11 minutes 24 seconds, PO Diaz hands a document to Lt. Guida, who asks, “He’s good otherwise?” Lt. Guida then says that he will give § 87(2)(b) “a break tonight,” but says, “Normally I would just take you to jail on general principle, because you have a bullshit license plate on your car.” Lt. Guida then states that it is illegal to have insurance in Virginia while doing one’s primary driving in New York. He says, “So, if I catch you in this car and it’s got a Virginia plate on it, I’m going to take you to jail for rate jumping on your insurance. Are you going to beat it in court? One thousand percent. But you’re still going to get arrested for it because it’s technically illegal.” At 12 minutes 14 seconds, Lt. Guida says, “If I find another temporary plate on this

car...you're going to jail, and I'm going to charge you with criminal possession of a forged instrument. That's what's going to happen, or you're going to register this car legal." At 13 minutes 3 seconds, Lt. Guida says, "I gave you fair warning. If I find Virginia plates on this, or another temporary tag, he's going to jail. This was your warning."

The BWC video reveals that Lt. Guida never said that § 87(2)(b) could or would be arrested for using his phone. However, he did say that § 87(2)(b) could be arrested for operating an improperly registered vehicle. Further, he said that if he saw § 87(2)(b) driving the vehicle with temporary plates or an out-of-state plate in the future, he would arrest § 87(2)(b).

Per New York State Vehicle and Traffic Law 401 (1-a), it is unlawful to operate any motor vehicle upon the public highways of New York State without the vehicle first being registered (Board Review 08). Per New York State Penal Law 176.10, a person is guilty of insurance fraud in the fifth degree, a misdemeanor, when he or she commits a fraudulent insurance act (Board Review 09). Lastly, per New York State Penal Law 170.25, a person is guilty of criminal possession of a forged instrument in the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he or she utters or possesses a written instrument officially issued or created by a public office, public servant, or governmental instrumentality (Board Review 10).

Lt. Guida's first remarks about arresting § 87(2)(b) referred to his vehicle being improperly registered. § 87(2)(b) stated in his initial testimony that his vehicle was not registered at all, before later stating that it was registered in his name. Additionally, Lt. Guida's BWC video shows that § 87(2)(b) gave inconsistent answers as where and when the vehicle had been purchased. As such, the investigation credits Lt. Guida's testimony that a database check for § 87(2)(b)'s license plate number returned negative results. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

However, Lt. Guida also stated that if he saw § 87(2)(b)'s vehicle at any time in the future, and the vehicle bore temporary plates or a Virginia plate, he would arrest § 87(2)(b). Lt. Guida suspected that § 87(2)(b)'s temporary plate was forged, and that § 87(2)(b) intended to "rate jump" by registering his vehicle in Virginia. Lt. Guida could have investigated further to determine if, at the time of the vehicle stop, § 87(2)(b) was guilty of either offense. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

It is not possible for Lt. Guida to predict the changing circumstances of § 87(2)(b)'s life, which indeed might require him to lawfully obtain a temporary plate or to register his vehicle in Virginia or any other state. § 87(2)(g)

§ 87(2)(b)

Allegation (I) Abuse of Authority: Lieutenant Daniel Guida interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) stated that while speaking with Lt. Guida, he removed his phone from his pocket and began to record a video. That he was recording a video was visible on the phone's screen because he was recording with the self-facing camera. Lt. Guida grabbed his phone away and held onto it for a moment before handing it back. § 87(2)(b) asked why Lt. Guida "snatched" the phone from him. Lt. Guida said that he knew he could not take § 87(2)(b)'s phone, but said, "I'm talking to you man to man. Don't pull out no camera on me."

Lt. Guida stated that after § 87(2)(b) called his mother, Lt. Guida instructed him not to make any more phone calls but said that § 87(2)(b) was free to record. Lt. Guida believed that § 87(2)(b)

could lawfully record the encounter. However, he did not want § 87(2)(b) to make any more phone calls, as he did not want § 87(2)(b) to invite more people to the scene. Lt. Guida denied ever interfering with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) provided the investigation with a brief video recorded on his cell phone (Board Review 04). The seven-second video shows Lt. Guida speaking to § 87(2)(b).

This video corresponds to the portion of Lt. Guida's BWC video from 4 minute 40 seconds until 4 minutes 47 seconds. The BWC video shows that § 87(2)(b) was holding his phone when it stopped recording. § 87(2)(b) then lifts the phone to his ear, placing a phone call. Lt. Guida takes the phone from § 87(2)(b)'s hand and says, "We're not having conversations right now." § 87(2)(b) responds, "You cannot snatch my phone." Lt. Guida says that § 87(2)(b) is incorrect and then, "You're going to hang up and tell her you're going to call her back, or your mom can wait." He then says, "Again, we're not making phone calls right now, because you're not free to go." At 5 minutes 21 seconds, Lt. Guida says, "Put your phone away. You can record if you want. We're not playing FreeCell or Candy Crush; we're not talking to your girlfriend or putting this on TikTok." There is no further discussion about § 87(2)(b) using his phone.

In combination with § 87(2)(b)'s cell phone video, Lt. Guida's BWC video reveals that he did not end the recording on § 87(2)(b)'s cell phone — § 87(2)(b) still held the phone when the recording ended — and told § 87(2)(b) that he could record the interaction but could not place any additional phone calls. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (J) Abuse of Authority: Lieutenant Daniel Guida failed to provide § 87(2)(b) with a business card.

It is undisputed that § 87(2)(b) was not arrested and did not receive a summons, and that Lt. Guida did not provide § 87(2)(b) with a business card. § 87(2)(b) stated that he never requested a business card and that Lt. Guida never offered him one. Lt. Guida stated that he did not provide § 87(2)(b) with a business card because this was a probable cause stop, which did not require that he provide a business card.

Lt. Guida's BWC video shows that Lt. Guida asked probing questions about where and when the vehicle had been purchased and about the validity of its registration. Additionally, the BWC video reveals, at 3 minutes 35 seconds, that Lt. Guida asked if § 87(2)(b) was in possession of a gun. Lastly, it is undisputed that Lt. Guida's officer searched § 87(2)(b)'s vehicle.

Per NYC Administrative Code 14-174, at the conclusion of law enforcement activities, including noncustodial questioning of individuals suspected of criminal activity, and searches of persons or property, including vehicles, and where there is no arrest or summons, an officer must offer a business card to the person(s) subject to such activities (Board Review 11).

§ 87(2)(g) Lt. Guida did not provide a business card to § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)

■ [REDACTED]
[REDACTED]

- ## Mediation, Civil, and Criminal Histories

- Squad: 8

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____